

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ENEL GREEN POWER NORTH AMERICA,
INC., ENEL KANSAS, LLC, and ENEL
MINNESOTA HOLDINGS, LLC,

Plaintiffs,

- against -

GERONIMO ENERGY, LLC,

Defendant.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 5/27/2020

18-CV-05882 (AJN)

**STIPULATION AND
PROPOSED ORDER
REGARDING USE OF
DISPUTED DOCUMENTS
DURING MEDIATION**

Plaintiffs Enel Green Power North America, Inc., Enel Kansas, LLC and Enel Minnesota Holdings, LLC (collectively, “Enel”), Plaintiff Geronimo Energy, LLC, a Minnesota LLC (“Minnesota Geronimo”), and mediation participants Geronimo Energy Holdings, LLC (together with Minnesota Geronimo, the “Geronimo Entities”), Geronimo Energy, LLC, a Delaware LLC (“Delaware Geronimo”), and NGV Emerald Acquisition Co., LLC (collectively with Enel, the Geronimo Entities, and Delaware Geronimo, the “Parties”), by and through their respective counsel of record, hereby enter into this stipulation and proposed order.

WHEREAS, the Parties have agreed to mediate their disputes before the Hon. Katharine H. Parker on May 27, 2020;

WHEREAS, on April 10, 2020, the Geronimo Entities sent a letter to Enel attaching certain email communications that the Geronimo Entities had designated as Exhibits 11 and 12 to the letter;

WHEREAS, on April 20, 2020, Enel asserted a claim of privilege over Exhibits 11 and 12, as well as any similar communications in the possession of the Geronimo Entities (the “Disputed Documents”);

WHEREAS, the Geronimo Entities dispute Enel's assertion of privilege over the Disputed Documents, but nonetheless agree not to share the Disputed Documents or their contents with third parties not involved in the mediation process; and

WHEREAS, in light of the pending mediation, the Parties wish to defer litigation on this issue until the mediation has concluded.

NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE, by and through their undersigned counsel, that:

1. The Parties shall not take any legal action with respect to any Party's assertion of privilege over the Disputed Documents until the mediation has concluded.

2. Pursuant to Federal Rule of Evidence 502(d), Enel need not raise any further objection or take any other legal action with respect to the Disputed Documents, or any references to the Disputed Documents, for the duration of the mediation, and Enel's failure to take such actions shall not constitute a waiver of any privilege that Enel may have over the Disputed Documents either in this litigation or any future litigation.

3. Pursuant to Federal Rule of Evidence 502(d), none of the Parties' submissions or communications in connection with the mediation shall constitute a waiver of any privilege that any Party may have over the Disputed Documents either in this litigation or any future litigation.

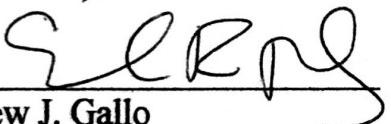
4. The Parties shall not disclose the Disputed Documents or any of their contents to any other person other than their respective counsel and Judge Parker until a Court has resolved whether Enel may assert privilege over the Disputed Documents.

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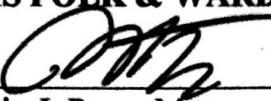
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SO ORDERED:

Date: May 27, 2020

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UNITED STATES MAGISTRATE JUDGE